

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UPTOWN PRODUCE CONNECTION, INC.,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	Case No. 08-CV-3660
)	Honorable Judge Charles R. Norgle
TRI-COUNTY PRODUCE, INC. and)	
ANGELO MARANO, DAVID MARANO,)	
and PATRICIA MARANO, each individually,)	
)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>		
STRUBE CELERY & VEGETABLE)	
COMPANY, MICHAEL J. NAVILO & SON,)	
INC. and COOSEMANS CHICAGO, INC.,)	
)	
Intervening -Plaintiffs,)	
)	
v.)	
)	
TRI-COUNTY PRODUCE, INC. and)	
ANGELO MARANO, DAVID MARANO,)	
and PATRICIA MARANO, each individually,)	
)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>		
ANTHONY MARANO COMPANY,)	
)	
Intervening -Plaintiff,)	
)	
v.)	
)	
TRI-COUNTY PRODUCE, INC. and)	
ANGELO MARANO, DAVID MARANO,)	
and PATRICIA MARANO, each individually,)	
)	
Defendants.)	

**MOTION TO ENFORCE TEMPORARY RESTRAINING
ORDER AND FOR CONTEMPT**

Uptown Produce Connection, Inc. ("Plaintiff"), by and through its undersigned counsel, hereby moves this Honorable Court to enforce the Temporary Restraining Order. In support of this motion, Plaintiff hereby states as follows:

1. On June 26, 2008, this Honorable Court entered a Temporary Restraining Order (the "TRO")(Doc# 10) against the defendants, Tri-County Produce, Inc. (the "Company"), Angelo Marano, David Marano and Patricia Marano, each individually, (collectively the "Principals")(the Principals and the Company are collectively referred to herein as the "Defendants"). A true and accurate copy of which is attached hereto as Exhibit A.

2. On July 1, 2008, this Honorable Court entered an Order extending the TRO to July 15, 2008 (Doc. #11).

3. On July 15, 2008, this Honorable Court entered an Order extending the TRO to August 19, 2008 (Doc. #29).

4. The TRO states, in relevant part:

Defendants, Tri-County Produce, Inc., Angelo Marano, David Marano and Patricia Marano, each individually, and their respective agents, attorneys, officers, assigns, and any of their banking institutions must not pay, withdraw, transfer, assign or sell any and all existing PACA trust assets or otherwise dispose of corporate or personal assets to any creditors, persons or entities until further Order for this Court or until Defendants deposit into the Registry of this Court the current aggregate sum of \$23,918.77.

See TRO, ¶ 1. (Doc. #10).

5. The TRO further states, in relevant part:

If Defendants fail to deposit into the Registry of this Court the sum of \$23,918.77 in full within three (3) business days of the entry of this Order, the Defendants must account to the Court and the Plaintiff's counsel for all accounts receivable, accounts payable, equipment, inventory and all other assets subject to the PACA trust and the regulations promulgated thereunder.

See TRO, ¶ 3. (Doc. #10).

6. The TRO further states, in relevant part:

[t]he Court hereby directs any banking institution holding funds for any of the Defendants to turn over to Plaintiff's undersigned counsel any statements, signature cards and other documents relating to or regarding any of the Defendants' accounts at such banking institutions within five (5) days of receipt of this Order.

See TRO, ¶ 4. (Doc. #10).

7. The TRO further states, in relevant part:

The Defendants, their agents, employees, successors, banking institutions, attorneys and all persons in active concert and participation with Defendants shall immediately turn over to the registry of the Court all assets impressed with the PACA trust.

See TRO, ¶ 5. (Doc. #10).

8. The TRO further states, in relevant part:

This Order will be binding upon the parties to this action, their officers, agents, servants, employees, banks, or attorneys and all other persons or entities **who receive actual notice of this Order by personal service or otherwise**. In this regard, within three (3) business days of the entry of this Order, the Defendants shall serve a copy of this Order on all financial institutions with which any of the Defendants does any business, may do any business with or who may be holding any PACA trust assets for or on behalf of any of the Defendants.

See TRO, ¶ 5. (emphasis added) (Doc. #10).

9. On June 27, 2008 counsel for the Plaintiff served the Defendants with a certified copy of the TRO via both First Class U.S. Mail, with proper postage pre-paid, and facsimile transmission to the Company's regularly listed business fax number. A true and accurate copy of the fax cover page and confirmation of good transmission to the Defendants is attached hereto as Exhibit B.

10. On June 27, 2008 counsel for the Plaintiff served the Mid-America/National City Bank (the "Bank") with a certified copy of the TRO via both First Class U.S. Mail, with proper

postage pre-paid, and facsimile transmission to the Bank's special services department, as the Bank's representative instructed. A true and accurate copy of the fax cover page and confirmation of good transmission to the Bank is attached hereto as Exhibit C.

11. Still further, on July 10, 2008, the Defendants were personally served with a Certified Copy of the TRO. See Doc. Nos. 13 - 16.

12. As of the date of this motion, the Defendants have failed to comply with the terms of this Honorable Court's TRO. Specifically, the Defendants have failed and otherwise refused to: (i) refrain from disposing of personal assets to any creditors, persons or entities until further Order for this Court; (ii) account to the Court and the Plaintiff's counsel for all accounts receivable, accounts payable, equipment, inventory and all other assets subject to the PACA trust; (iii) immediately turn over to the registry of the Court all assets impressed with the PACA trust, and; (iv) Defendants shall serve a copy of this Order on all financial institutions with which any of the Defendants does any business, may do any business with or who may be holding any PACA trust assets for or on behalf of any of the Defendants.

13. The Defendants have admittedly transferred, sold or otherwise disposed of personal assets and have refused to serve their personal banking institutions with a copy of the TRO in direct violation of this Court's TRO.

14. On information and belief, the Defendants continue to actively transfer, sell and otherwise dispose of personal assets in direct violation of this Court's TRO.

15. Notwithstanding receipt of actual notice of the TRO, as of the date of this motion the Bank has failed to comply with the terms of this Honorable Court's TRO. Specifically, the Bank has failed and otherwise refused to: (i) turn over to Plaintiff's undersigned counsel any statements, signature cards and other documents relating to or regarding any of the Defendants' accounts at such

banking institutions within five (5) days of receipt of the TRO and (ii) immediately turn over to the registry of the Court all assets impressed with the PACA trust.

16. The Defendants' wilful violation of this Honorable Court's TRO severely prejudiced and continues to prejudice the Plaintiff and every other individual PACA Claimant in this action. Specifically, the Defendants aforementioned activity, by design, has removed substantial assets from the reach of any judgment creditor, including the plaintiffs herein.

17. The Bank's wilful violation of this Honorable Court's TRO severely prejudiced and continues to prejudice the Plaintiff and every other individual PACA Claimant in this action. Specifically, the Bank's aforementioned omissions and failure to comply has wholly undermined this Honorable Court's TRO and has significantly contributed to the Defendant's continued dissipation of PACA Trust assets. The foregoing constitutes aiding and abetting further dissipation of trust assets in direct violation of this Honorable Court's TRO.

WHEREFORE, Uptown Produce Connection, Inc. hereby respectfully requests this Honorable Court to confirm the status of the TRO and enforce the same as follows:

- A. Issue an order holding the Defendants in contempt of Court for their willful failure to comply with the terms of this Honorable Court's TRO;
- B. Issue an order holding the Bank in contempt of Court for its failure to comply with the terms of this Honorable Court's TRO and for aiding and abetting the Defendant's continued dissipation of the PACA Trust;
- C. Issue an order directing the Bank to immediately turn over to Plaintiff's undersigned counsel any statements, signature cards and other documents relating to or regarding any of the Defendants' accounts and further directing the Bank to turn over to the registry of the Court all assets impressed with the PACA trust forthwith.

- D. Ordering the Defendants and the Bank, jointly and severally, to pay the Plaintiff's reasonable attorneys' fees and costs incurred in enforcing this Honorable Court's TRO; and
- E For such other and further relief as this Honorable Court deems appropriate upon consideration of the matter.

Respectfully submitted,

UPTOWN PRODUCE CONNECTION, INC.

By: /s/ Jason R. Klinowski, Esq.
One of Its Attorneys

Michael J. Keaton, Esq.
Illinois Bar No. 6207203
Jason R. Klinowski, Esq.
Illinois Bar. No. 6283266
KEATON & ASSOCIATES, P.C.
1278 W. Northwest Highway, Suite 903
Palatine, Illinois 60067
Tel: 847/934-6500
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing, together with any and all exhibits thereto, if any, has been served upon all counsel of record properly registered with the Court's ECF system this 22nd day of July 2008 and further served, via fax and/or first class mail with proper postage prepaid, upon the following recipients:

TRI-COUNTY PRODUCE, INC.
408 Brook Street
Elgin, IL 60120

DAVID MARANO
537 Blue Ridge Ct.
Elgin, Illinois 60123

ANGELO MARANO
199 Bayview Road
Elgin, Illinois 60123

NATIONAL CITY BANK
c/o Special Services Department
1900 East Ninth Street
Cleveland, Ohio 44114
Fax1: 216/257-5256
Fax2: 216/257-5863

PATRICIA MARANO
199 Bayview Road
Elgin, Illinois 60123

Respectfully submitted,

UPTOWN PRODUCE CONNECTION, INC.

By: /s/ Jason R. Klinowski, Esq.
One of Its Attorneys

Michael J. Keaton, Esq.
Illinois Bar No. 6207203
Jason R. Klinowski, Esq.
Illinois Bar. No. 6283266
KEATON & ASSOCIATES, P.C.
1278 W. Northwest Highway, Suite 903
Palatine, Illinois 60067
Tel: 847/934-6500
Counsel for the Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UPTOWN PRODUCE CONNECTION, INC.,)

Plaintiff,

CIVIL ACTION

V.

08CV3660

TRI-COUNTY PRODUCE, INC. and)
ANGELO MARANO, DAVID MARANO,)
and PATRICIA MARANO, each individually,)

JUDGE NORGLE

MAGISTRATE JUDGE NOLAN

Defendants.

TEMPORARY RESTRAINING ORDER

Plaintiff's Application for the issuance of a Temporary Restraining Order under Federal Rules of Civil Procedure 65(b) (the "Application") came before this Court and the undersigned on the date set forth below. The Court considered the Application, the Affidavit of David P. Block and all related moving papers. The Plaintiff's Affidavit demonstrates defendants, Tri-County Produce, Inc. (the "Company"), Angelo Marano, David Marano and Patricia Marano, each individually, (collectively the "Principals") (the Principals and the Company are collectively referred to herein as the "Defendants"), purchased perishable agricultural commodities ("Produce") in interstate commerce and, thereafter, failed to pay the Plaintiff in violation of the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. §§ 499a-499t, as amended (2004 & Supp. 2006) (the "PACA").

These same pleadings and supporting documents establish that the Defendants have either dissipated the PACA trust or have presented a sufficient threat of dissipation of such trust to warrant the relief granted in this Order. On the basis of the pleadings, Affidavit and other submissions the Plaintiff filed in this matter, it appears to this Court that the Plaintiff will suffer immediate and irreparable injury due to the Defendants' dissipation of Plaintiff's beneficial interest in the statutory



trust created pursuant to 7 U.S.C. § 499e(c) and that such dissipation will continue in the absence of injunctive relief. The Court is of the opinion that a Temporary Restraining Order should be issued without notice thereof due to the threat of further dissipation that such notice might allow.

Based on the foregoing, **IT IS HEREBY ORDERED:**

1. Defendants, Tri-County Produce, Inc., Angelo Marano, David Marano and Patricia Marano, each individually, and their respective agents, attorneys, officers, assigns, and any of their banking institutions must not pay, withdraw, transfer, assign or sell any and all existing PACA trust assets or otherwise dispose of corporate or personal assets to any creditors, persons or entities until further Order for this Court or until Defendants deposit into the Registry of this Court the current aggregate sum of \$23,918.77.

2. Pending further orders of this Court, or until, such time as Defendants deposit into the Registry of this Court the current aggregate sum of \$23,918.77, no banking institution holding funds for any Defendant shall pay, transfer or permit assignment or withdrawal of any existing PACA trust assets held on behalf of Defendants. Further, pending further order of this Court, or until such time as Defendants deposit into the Registry of this Court the sum of \$23,918.77, no banking institution holding funds for any Defendant shall pay, transfer or permit assignment or withdrawal of the corporate or personal assets of any Defendants without this Court's express written approval.

3. If Defendants fail to deposit into the Registry of this Court the sum of \$23,918.77 in full within three (3) business days of the entry of this Order, the Defendants must account to the Court and the Plaintiff's counsel for all accounts receivable, accounts payable, equipment, inventory and all other assets subject to the PACA trust and the regulations promulgated thereunder.

4. In furtherance of such an accounting, the Court hereby directs any banking

institution holding funds for any of the Defendants to turn over to Plaintiff's undersigned counsel any statements, signature cards and other documents relating to or regarding any of the Defendants' accounts at such banking institutions within five (5) days of receipt of this Order.

5. The Defendants, their agents, employees, successors, banking institutions, attorneys and all persons in active concert and participation with Defendants shall immediately turn over to the registry of the Court all assets impressed with the PACA trust.

6. This Order will be binding upon the parties to this action, their officers, agents, servants, employees, banks, or attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise. In this regard, within three (3) business days of the entry of this Order, the Defendants shall serve a copy of this Order on all financial institutions with which any of the Defendants does any business, may do any business with or who may be holding any PACA trust assets for or on behalf of any of the Defendants.

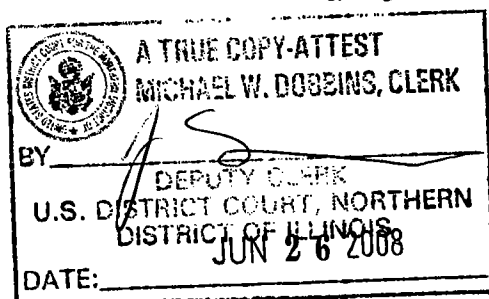
7. Because Defendants already possess \$23,918.77 of PACA trust assets which are the Plaintiff's property, the bond in this matter is hereby set at \$0.00.

8. A ^{STATUS} ~~Preliminary Injunction~~ Hearing is hereby set for July 1, 2008 at 10:00 A.M. in Courtroom 2341 of the United States District Court for the Northern District of Illinois, in Chicago, Illinois.

9. Plaintiff, through its Counsel, shall serve a true and correct copy of this Order on all Defendants including their respective counsel, if known.

DATE: 6-26-08

ENTER:



[Signature]
UNITED STATES DISTRICT JUDGE

KEATON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

1278 W. NORTHWEST HWY., SUITE 903
PALATINE, ILLINOIS 60067
TOLL-FREE: 800/535-9949
TEL: 847/934-6500
FAX: 847/934-6508
KEATON@PACATRUST.COM

FACSIMILE TRANSMISSION COVER SHEET

DATE: June 27, 2008

TO: Mr. Angelo Marano

FAX NO.: 847/742-9975

FROM: Michael J. Keaton, Esq. *MJK*

RE: Tri-County Produce
Our File No. 9285

TOTAL NUMBER OF PAGES (including this page): 4

If you do not receive the indicated number of pages, or if there are any problems or questions, please call our office immediately at: 847/934-6500. Thank you.

COMMENTS: See enclosed order entered against you and the other defendants yesterday.

This message is intended only for the use of the individual or entity to which it is addressed. The information contained in this facsimile is protected by the attorney/client privilege and is confidential. It may also contain attorney work product or trade secret information which is exempt from disclosure under applicable laws. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the below address via the U.S. Postal Service. Thank you.



*** TX REPORT ***

TRANSMISSION OK

TX/RX NO
CONNECTION TEL
SUBADDRESS
CONNECTION ID
ST. TIME
USAGE T
PGS. SENT
RESULT

1415

18477429975

06/27 10:46

01'21

4

OK

AMB
Certified Copy of TRO to D

KEATON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

1278 W. NORTHWEST HWY., SUITE 903
PALATINE, ILLINOIS 60067
TOLL-FREE: 800/535-9949
TEL: 847/934-6500
FAX: 847/934-6508
KEATON@PACATRUST.COM

FACSIMILE TRANSMISSION COVER SHEET

DATE: June 27, 2008

TO: Mid-America/National City Bank - Special Services Dept.

FAX NO.: 216/257-5256

FAX NO.: 216/257-5863

FROM: Michael J. Keaton, Esq. *MJK*

RE: Tri-County Produce
Our File No. 9285

TOTAL NUMBER OF PAGES (including this page): 4

If you do not receive the indicated number of pages, or if there are any problems or questions, please call our office immediately at: 847/934-6500. Thank you.

COMMENTS: I enclose a copy of Federal Court Order entered yesterday to restrain and freeze all accounts of the named Defendants. Should you or the Bank's Counsel have any questions, please feel free to call.

This message is intended only for the use of the individual or entity to which it is addressed. The information contained in this facsimile is protected by the attorney/client privilege and is confidential. It may also contain attorney work product or trade secret information which is exempt from disclosure under applicable laws. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that **any distribution or copying of this communication is strictly prohibited**. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the below address via the U.S. Postal Service. Thank you.



*** MULTI TX/RX REPORT ***

TX/RX NO

1414

PGS.

4

TX/RX INCOMPLETE

TRANSACTION OK

(1)

12162575256

(2)

12162575863

ERROR INFORMATION

KEATON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

1278 W. NORTHWEST HWY., SUITE 903
PALATINE, ILLINOIS 60067
TOLL-FREE: 800/535-9949
TEL: 847/934-6500
FAX: 847/934-6508
KEATON@PACATRUST.COM

FACSIMILE TRANSMISSION COVER SHEET

DATE: June 27, 2008

TO: Mid-America/National City Bank

FAX NO.: 847/841-8947

FAX NO.: 847/468-1956

FAX NO.: 847/429-0672

FAX NO.: 847/741-3972

FROM: Michael J. Keaton, Esq. *mk*

RE: Tri-County Produce
Our File No. 9285

TOTAL NUMBER OF PAGES (including this page): 4

If you do not receive the indicated number of pages, or if there are any problems or questions, please call our office immediately at: 847/934-6500. Thank you.

COMMENTS: I enclose a copy of Federal Court Order entered yesterday to restrain and freeze all accounts of the named Defendants. Should you or the Bank's Counsel have any questions, please feel free to call.

This message is intended only for the use of the individual or entity to which it is addressed. The information contained in this facsimile is protected by the attorney/client privilege and is confidential. It may also contain attorney work product or trade secret information which is exempt from disclosure under applicable laws. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that **any distribution or copying of this communication is strictly prohibited**. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the below address via the U.S. Postal Service. Thank you.

*** MULTI TX/RX REPORT ***

TX/RX NO

1413

PGS.

4

TX/RX INCOMPLETE

TRANSACTION OK

(1) 18478418947
(2) 18474681956
(3) 18474290672
(4) 18477413972

MLC

ERROR INFORMATION